

REMARKS/ARGUMENTS

I. Introduction:

Claims 1, 3-21, 23-30 and 38-39 are pending in this application. Reconsideration of the present application, as amended, is respectfully requested.

II. Claim Rejections Under 35 U.S.C. 103:

Claims 1, 3, 5-7, 10, 12-21, 23-26, 29-30, and 38-39 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,178,449 (Forman et al.) in view of U.S. Patent No. 6,519,714 (Sweet et al.).

Applicants respectfully submit that claims 1 and 20, and claims depending therefrom are patentable over the prior art of record, including Forman et al. and Sweet et al. Independent claims 1 and 20 call for the use of a previously recorded transaction between a user machine and an information source. That is, claim 1 recites, "...continuing the transaction between the information source and the data acquisition agent by simulating a transaction previously recorded between a user machine, the user machine not the data acquisition agent, and the information source..." and claim 20 recites, "...wherein the data acquisition agent is configured to receive a previously recorded transaction between a user machine, the user machine not the data acquisition agent, and the web server and utilize the recorded transaction to execute the same transaction with the web server."

As noted by the Examiner, Forman et al. fail to teach continuing the transaction between the information source and the data acquisition agent by simulating a transaction previously recorded by a user machine. Forman et al. describe how straightforward application transactions between a client and server are measured and recorded. "The actual measurement and recording

of transaction times occurs in steps 726-734....” Col. 10, lines 16-17. “The method of monitoring transaction times using the computer system of Figs. 4-6 is represented in a flow diagram of FIG. 7....The client application instance 710 corresponds to one of the client applications, such as client application 1 (414) or 3 (434) of FIG. 4.” Col. 9, lines 44-51.

Sweet et al. disclose a method for evaluating computer resources. A simulated application transaction is used to evaluate computer resources. Sweet et al. utilize a software agent that emulates a client side of a client/server transaction so that what happens on the network and on the server is the same or nearly the same as what would happen if the transaction were initiated by an actual end user on the client side. Sweet et al. do not show or suggest simulating a transaction previously recorded by a user machine and the information source. Applicants’ invention is particularly advantageous in that a recorder is used to capture inputs to forms included on web pages and mouse clicks made by a user. As such, a data acquisition agent can execute a recorded transaction so that it can collect performance measurements which are representative of the actual transaction recorded between a user machine and the information source.

Accordingly, claims 1 and 20 are submitted as patentable over Forman et al. and Sweet et al.

Claims 3, 5-7, 10, 12-19, 38, and 39, depending from claim 1, and claims 21, 23-26, 29, and 30, depending from claim 20, are submitted as patentable for the same reasons as claims 1 and 20. Furthermore, it is evident that some, if not all, of these dependent claims are allowable in their own right and further illustrate the differences between the cited references and the applicants’ invention.

For example, dependent claim 3 further characterizes the applicants’ invention, “wherein collecting performance measurements comprises collecting download time of the data in response to the request for information.” The Examiner’s assertion that the “Forman reference discloses collecting performance measurements comprises collecting download time of the data

in response to the request for information (Figure 5)," suggests that only a portion of the method recited in claims 1 and 3 is measured. That is, the performance of the first two steps of claim 1 and referred to in claim 3, "sending a request for information to the information source from a data acquisition agent connected to the network," and "loading data responsive to the request for information onto the data acquisition agent from the information source," is measured.

However, the performance of "continuing the transaction between the information source and the data acquisition agent by simulating a transaction previously recorded between a user machine, the user machine not the data acquisition agent, and the information source" is not measured since Forman *et al.* have no description of a return to the same application transaction so that times of portions of a transaction are measured. See the description of config table 482, i.e., col. 7, line 60 to col. 8, line 6, and stats table 484, i.e., col. 8, lines 49-62. It makes no sense that the times of partial transactions, but not the time of the entire transaction, are measured and collected. Rather, it would seem more logical to assume that Forman *et al.* measure and collect the times of entire application transactions. "With the config table 482 of FIG. 5 properly configured, transaction time agent 460 is now ready to collect transaction times for the listed applications." Col. 8, lines 47-49. In such a case, claim 3 cannot be said to be obvious in view of the Forman patent and hence should also be allowed.

Claims 4, 8-9, 11, and 27-28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Forman *et al.* and Sweet *et al.*, and further in view of U.S. Patent No. 6,438,592 (Killian). The cited Killian patent does not remedy the deficiencies noted above for the Forman *et al.* and Sweet *et al.* references.

III. Conclusion:

Applicants believe that all of the pending claims are in condition for allowance and should be passed to issue. If the Examiner feels that a telephone conference would in any way

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expedite the prosecution of the application, please do not hesitate to call the undersigned at (408) 399-5608.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Kaplan', with a stylized flourish at the end.

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